

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF  
VIRGINIA

HARRISONBURG DIVISION

Irene Carter

*Plaintiff*

v.

Case No: 5:14-cv-00003-MFU-JCH

America Note Servicing

Atlantic Law Group, LLC

ALG, LLC

*Defendants*

THIRD AMENDED COMPLAINT

Preliminary Statement

1. This is an action for declaratory relief brought by a homeowner who faces the illegal foreclosure of her home. The homeowner also brings claims for damages pursuant to the Federal Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq* (FDCPA) and the Truth in Lending Act, , 15 U.S.C. §1632 *et seq*.

Parties

2. Plaintiff Irene Carter ("Ms. Carter"), is a natural person who resides in her home, located at 5392 Bryant Hollow Road, Elkton, Virginia 22827. In 2007, Ms. Carter executed a Power of Attorney appointing her daughter, Paulette Dowell, as her attorney in fact.
3. Defendant America Note Servicing ("ANS") is a Delaware corporation that conducts business in the Commonwealth of Virginia without being authorized to do so. Pursuant to Virginia Code § 8.01-301, Defendant ANS may be served on its agent, the Atlantic Law Group.
4. Defendant Atlantic Law Group, LLC is a Delaware corporation authorized to do business in the Commonwealth of Virginia. As a law firm in the business of conducting foreclosures, Defendant Atlantic Law Group is a debt collector for the purposes of the

FDCPA. *Wilson v. Draper & Goldberg*, 443 F.3d 373 (4th Cir. Md. 2006). Defendant Atlantic Law Group may be served on its registered agent, the Corporation Service Company, Bank of America Center, 16<sup>th</sup> Floor, 1111 East Main Street, Richmond, Virginia 23219.

5. Defendant ALG, LLC is a Virginia Corporation that is in the business of conducting foreclosures. Defendant ALG is a debt collector for the purposes of the FDCPA. *Wilson v. Draper & Goldberg*, 443 F.3d 373 (4th Cir. Md. 2006). Defendant ALG, LLC may be served on its registered agent, Fielding L Williams Jr, 200 South 10<sup>th</sup> St, Ste 1600, Richmond, Virginia 23218.
6. Upon information and belief, Defendants Atlantic Law Group and ALG were each acting both on their own behalf and on behalf of one another at all times relevant hereto.

Facts

7. On February 6, 2003, Ms. Carter took out a credit line Deed of Trust with Bank of America, which is not a party to this case. A partial copy of the 2003 Deed of Trust is attached hereto as Exhibit A.
8. The 2003 Deed of Trust gave Bank of America a security interest in Ms. Carter's home, which is located at 5392 Bryant Hollow Road, Elkton, Virginia 22827. See Exhibit A.
9. The 2003 Deed of Trust bore the loan number 68991008494599. See Exhibit A.
10. Subsequent to its execution, the 2003 Deed of Trust was recorded in the Rockingham County Land Records at Deed Book 2349, Page 642. See Exhibit A.
11. On September 14, 2004, the 2003 Deed of Trust was refinanced with a second Deed of Trust between Ms. Carter and Bank of America. A partial copy of the second Deed of Trust is attached as Exhibit B.
12. The second Deed of Trust bore the loan number 7022836618. See Exhibit B.
13. A copy of the settlement statement relative to the second Deed of Trust is attached hereto as Exhibit C. Exhibit C clearly shows that the Deed of Trust with the loan number 68991008494599, along with two other Deeds of Trust, was refinanced with the second Deed of Trust.
14. The Deed of Trust with loan number 68991008494599 is the 2003 Deed of Trust, which was recorded in the Rockingham County Land Records at Deed Book 2349, Page 642. See Exhibit A.
15. Once the 2003 Deed of Trust was refinanced, the security interest that it created was extinguished.
16. Ms. Carter has been making on-time payments pursuant to the second Deed of Trust since it was executed in 2004.
17. Subsequent to the 2004 refinancing, Bank of America failed to close the account associated with the 2003 Deed of Trust, even though it had been paid off, and the security interest it created had been extinguished.
18. On December 23, 2005, Bank of America assigned the 2003 Deed of Trust to an entity by the name of United Guaranty Residential Insurance Company of North Carolina

("UGRI"), which is not a party to this case. A partial copy of the assignment document is attached hereto as Exhibit D. Exhibit D clearly identifies the Deed of Trust being assigned as recorded in the Rockingham County Land Records at Deed Book 2349, Page 642.

19. By the time of the assignment, the security interest created by the 2003 Deed of Trust had been extinguished.
20. When UGRI purchased the 2003 Deed of Trust, it did not purchase a security interest in Ms. Carter's home.
21. Upon information and belief, UGRI subsequently assigned the Deed of Trust to Defendant ANS.
22. Upon information and belief, Defendant ANS is currently the holder of the promissory note associated with the 2003 Deed of Trust.
23. By the time Defendant ANS purchased the 2003 Deed of Trust, the 2003 Deed of Trust no longer secured Ms. Carter's home.
24. On May 1, 2013, Defendant ANS executed a Substitution of Trustee for the 2003 Deed of Trust which appointed Defendant ALG as Substitute Trustee. See Exhibit E, attached hereto.
25. Pursuant to the authority supposedly conferred by the Substitution of Trustee, Defendants Atlantic Law Group and ALG scheduled a foreclosure sale of Ms. Carter's home for Tuesday, June 11, 2013. A copy of the relevant newspaper advertisement is attached as Exhibit F.
26. Defendants Atlantic Law Group and ALG lack authority to foreclose because the 2003 Deed of Trust was refinanced and paid off in 2004. The 2003 Deed of Trust no longer secures Ms. Carter's home.
27. Defendants have no security interest in Ms. Carter's home.
28. On Tuesday, May 28, 2013, two weeks before the scheduled foreclosure, Ms. Carter's counsel faxed an Authorization for Release of Information signed by Ms. Carter to Defendant Atlantic Law Group, along with a cover letter. The May 28 cover letter is attached hereto as Exhibit G. The May 28 cover letter explained that the Deed of Trust under which Defendants Atlantic Law Group and ALG was foreclosing had been refinanced and paid off.
29. On Wednesday, May 29, 2013, Ms. Carter's counsel called Defendant Atlantic Law Group to confirm that the faxed authorization and cover letter had been received. Ms. Carter's counsel explained to an agent of Defendant Atlantic Law Group that Defendants Atlantic Law Group and ALG lacked authority to foreclose because the 2003 Deed of Trust had been paid off.
30. The agent of Defendant Atlantic Law Group told Ms. Carter's counsel that Defendant Atlantic Law Group required a written dispute of the scheduled foreclosure.

31. Accordingly, Ms. Carter's counsel faxed a written dispute of the foreclosure to Defendant Atlantic Law Group on that same day. A copy of the May 29 dispute is attached as Exhibit H.
32. The May 29 dispute explained that the Deed of Trust under which Defendants were planning to foreclose had been refinanced and paid off, and that Defendants had no authority to foreclose. See Exhibit H.
33. On Thursday, May 30, 2013, Ms. Carter's counsel called Defendant Atlantic Law Group to check the status of the May 29 dispute. An agent of Defendant Atlantic Law Group told Ms. Carter's counsel that she could not expect to receive a response until Friday, June 7.
34. On Friday, May 31, 2013, Ms. Carter's counsel called Defendant Atlantic Law Group to report that Ms. Carter was prepared to reinstate the loan if Defendant Atlantic Law Group could provide a reinstatement figure. An agent of Defendant Atlantic Law Group told Ms. Carter's counsel that she could not expect a reinstatement figure for another week.
35. On Thursday, June 6, 2013, Ms. Carter's counsel again called Defendant Atlantic Law Group to check on the status of the May 29 foreclosure dispute. An attorney for Atlantic Law Group told Ms. Carter's counsel that Atlantic Law Group had no liability, since Ms. Carter had failed to respond to Defendant Atlantic Law Group's 30 day debt validation notice sent in March 2013.
36. Despite being repeatedly put on notice that they lack authority to foreclose, Defendants expressed no intention to cancel the June 11, 2013 sale.
37. The sale was ultimately cancelled after the present action was filed and a *lis pendens* was recorded in the clerk's office.
38. Unless this court intervenes, there is nothing to stop Defendants from attempting to foreclose again.
39. Ms. Carter's rights are in doubt and in peril.
40. In the alternative to the facts stated in Paragraphs 7-39, Plaintiff hereby incorporates by reference the facts stated in Paragraphs 1-53 of Defendant America Note Servicing's Counter-Complaint, as if set forth verbatim herein.

CAUSES OF ACTION

First Cause of Action

All Defendants

Declaratory Judgment

41. Plaintiff re-asserts and re-alleges Paragraphs 1-40.
42. Defendants claim authority to foreclose on Ms. Carter's home pursuant to a Deed of Trust that was refinanced and paid off nearly nine years prior to the date of the present filing.
43. The dispute and controversy is a justiciable matter which is not speculative.

44. A resolution by this court will determine the rights and interests of the parties to Ms. Carter's home.
45. Pursuant to Virginia Code §§ 8.01-184 and 8.01-191, there is an actual justiciable controversy, and a declaratory judgment is the appropriate mechanism for resolving the ownership interests of each of the parties hereto to Ms. Carter's home.
46. Ms. Carter is entitled to a declaratory judgment that Defendants do not have a security interest in her home.

Second Cause of Action

Defendants Atlantic Law Group and ALG

Violation of the Federal Fair Debt Collection Practices Act

47. Plaintiff re-asserts and re-alleges Paragraphs 1-40.
48. Defendants Atlantic Law Group and ALG use instrumentalities of interstate commerce or the mails in a business whose principal purpose is the enforcement of security interests.
49. Defendants Atlantic Law Group and ALG are debt collectors for the purpose of 15 U.S.C. § 1692f(6); *Wilson v. Draper & Goldberg*, 443 F.3d 373 (4th Cir. Md. 2006).
50. 15 U.S.C. § 1692f(6) makes it unlawful for a debt collector to take "any nonjudicial action to effect dispossession or disablement of property if there is no present right of the property claimed as collateral through an enforceable security interest."
51. When Defendants Atlantic Law Group and ALG scheduled a foreclosure of Ms. Carter's home pursuant to a Deed of Trust that had been refinanced and paid, they violated 15 U.S.C. § 1692f(6).
52. Ms. Carter is entitled to actual damages, statutory damages, costs, and reasonable attorney's fees pursuant to the FDCPA.

Third Cause of Action

Defendant America Note Servicing

Violation of the Federal Fair Debt Collection Practices Act

53. Plaintiff re-asserts and re-alleges paragraphs 1-40.
54. As a person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of debts, ANS is a debt collector as the term is defined in the FDCPA, 15 U.S.C. § 1692a(6).
55. Even though the debt at issue in this case is owned by ANS, ANS is not a creditor for the purposes of the FDCPA, since it acquired the debt in question after the debt allegedly went into default. *Kimber v. Federal Financial Corporation*, 668 F. Supp. 1480, 1485 (M.D. Ala 1987).
56. The statute of limitations on the alleged debt in the present case expired in 2008.
57. Scheduling a foreclosure is an attempt to collect a debt. *Wilson v. Draper & Goldberg*, 443 F.3d 373, 379 (4th Cir. Md. 2006)
58. In attempting to collect on the alleged debt in 2013, five years after the statute of limitations had expired, ANS committed a "false representation of the character, amount,

or legal status of [a] debt,” in violation of the FDCPA. 15 U.S.C. § 1692e(2)(B): *Kimber v. Federal Financial Corporation*, 668 F. Supp. 1480, 1489 (M.D.Ala 1987).

59. As a person “who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interests,” ANS is also a debt collector for the limited purposes of 15 U.S.C. 1692f(6). *See* 15 U.S.C. § 1692a(6).
60. ANS scheduled a foreclosure sale pursuant to a debt that was not secured by the home in question, and that, upon information and belief, did not even exist.
61. In doing so, ANS violated 15 U.S.C. 1692f(6), which prohibits debt collectors from taking “any nonjudicial action to effect dispossession or disablement of property if there is no present right of the property claimed as collateral through an enforceable security interest.”
62. Ms. Carter is entitled to actual damages, statutory damages, and reasonable attorney’s fees pursuant to the FDCPA.

#### Fourth Cause of Action

#### Violation of the Federal Truth in Lending Act

#### Defendant America Note Servicing

63. Plaintiff re-asserts and re-alleges paragraphs 1-40.
64. Assuming without admitting that Ms. Carter was obligated to ANS to make payments under a “child loan,” that obligation was a consumer credit transaction subject to the requirements of the Federal Truth in Lending Act, 15 U.S.C. §1632 *et seq.* (“TILA”).
65. TILA is further explained by Regulation Z, 12 C.F.R. § 226.01 *et seq.*
66. Assuming without admitting that there was an open-ended “child loan” that was held by ANS and secured by Plaintiff’s home, then ANS was required by Regulation Z to send periodic statements containing certain information about the loan. 12 C.F.R. § 226.7.
67. ANS claims that it owned the alleged loan for approximately a year before it initiated the foreclosure of Plaintiff’s home. Counter-complaint, paragraph 32.
68. ANS never sent any periodic statements to Plaintiff relative to the alleged loan.
69. Ms. Carter is entitled to actual damages, statutory damages, and reasonable attorney’s fees pursuant to TILA.

### AFFIRMATIVE DEFENSES TO ALLEGATIONS CONTAINED IN COUNTER-COMPLAINT FILED BY DEFENDANT AMERICA NOTE SERVICING

#### Affirmative Defense 1

#### Statute of Limitations

70. Plaintiff re-asserts and re-alleges paragraphs 1-53.
71. Assuming that there was an agreement between Ms. Carter and Bank of America for the extension of a “child loan,” there is no writing memorializing such an agreement.



72. Any agreement between Ms. Carter and Bank of America for the extension of a “child loan” would constitute an oral contract.
73. In the Commonwealth of Virginia, the statute of limitations for enforcing an oral contract is three years. See Va. Code § 8.01-246.
74. According to ANS, no payments have been made on the “child loan” since October 2005. Countercomplaint, Paragraph 29.
75. Even if there was an agreement between Plaintiff and Bank of America for the extension of a “child loan,” that agreement may no longer be enforced.

Affirmative Defense 2

Laches

76. Plaintiff re-asserts and re-alleges paragraphs 1-40.
77. “An affirmative defense to claims for equitable relief, laches requires a defendant to prove two elements: “(1) lack of diligence by the party against whom the defense is asserted, and (2) prejudice to the party asserting the defense.” *Perry v. Judd*, 471 Fed. Appx. 219, 224 (4th Cir. 2012).
78. Assuming without admitting that ANS has a security interest in Plaintiff’s home, ANS did not seek to foreclose on that loan until nearly eight years after the loan went into default.
79. During those eight years, interest and fees on the alleged loan accrued in the amount of nearly \$10,000.
80. During those eight years, Ms. Carter’s husband died, and Ms. Carter lost most of her faculties began to suffer from dementia.
81. Ms. Carter’s daughter currently cares for her and lives with her in the home.
82. Since periodic statements on the loan were never sent, Ms. Carter’s daughter did not know that any money was owed to ANS
83. Assuming ANS has a security interest in Ms. Carter’s home, ANS was not diligent in asserting its rights.
84. Ms. Carter was prejudiced by ANS’s lack of diligence.
85. ANS is barred by the doctrine of laches from seeking either a declaratory judgment or a money judgment in the present case.

WHEREFORE the Plaintiff by counsel respectfully prays this honorable court to award her the following relief:

- 1) Temporary and permanent injunctions against the foreclosure of her home;
- 2) A declaratory judgment that Defendants do not have a security interest in Plaintiff’s home;
- 3) Dismiss the Counter-Complaint with prejudice;

- 4) Actual damages as determined by the court pursuant to the FDCPA, 15 U.S.C. § 1692k(a)(1);
- 5) Statutory damages in the amount of \$1000 pursuant to the FDCPA, 15 U.S.C. § 1692k(a)(2)(A);
- 6) Statutory damages in the amount of twice the applicable finance charge as determined by the court pursuant to 15 U.S.C. § 1640(a)(2)(A)(i);
- 7) Costs and reasonable attorney's fees pursuant to 15 U.S.C. § 1692k(a)(3) and 15 U.S.C. § 1640(a)(3);
- 8) Plaintiff is not asking to be awarded actual damages twice for the same harm, and to the extent of any overlap in actual damages she asks only to recover once;
- 9) Any other relief the court may see fit.

TRIAL BY JURY IS HEREBY DEMANDED ON ALL MATTERS SO TRIABLE

Respectfully Submitted,

Irene Carter

By Counsel

By \_\_\_\_\_/s/\_\_\_\_\_

TUCKER, GRIFFIN BARNES, PC  
Caroline F. Klosko, VSB # 78699  
307 Rio Road West  
Charlottesville, Virginia 22901  
Phone: (434) 951-0843  
Fax: (434) 951-0875  
Email: CKlosko@TGBlaw.com



B 2 3 4 9 P 6 4 2

Ex A

WHEN RECORDED MAIL TO:  
Bank of America Consumer Collateral  
Tracking, FL9-700-04-10  
9000 Southside Blvd, Bldg 700  
Jacksonville, FL 32256

RETURN TO: *Valerie Jones*  
SAFEGUARD PROPERTIES, INC.  
650 SAFEGUARD PLAZA  
BROOKLYN HEIGHTS, OHIO 44131  
ATTN: TITLE DEPT.

Tax Map Reference Not(s): 113-A-58

FOR RECORDER'S USE ONLY

Page 1

11A 2449196207

This Deed of Trust prepared by: SEANTAL PETERSON, Bank of America, N.A.

DEED OF TRUST

THIS IS A CREDIT LINE DEED OF TRUST

Maximum aggregate amount of principal  
to be secured hereby at any one time: \$20,000.00

Name and address of Noteholder secured hereby:

Bank of America, N.A.  
c/o Virginia Main Office  
1111 E. Main Street  
Richmond, VA 23219

THIS DEED OF TRUST is dated February 6, 2003, among IRENE B CARTER, AKA IRENE DAVIS CARTER ("Grantor"); Bank of America, N.A., whose address is c/o Virginia Main Office, 1111 E. Main Street, Richmond, VA 23219 (referred to below sometimes as "Lender" and sometimes as "Beneficiary"); and PRLAP, INC., a United States-of-Virginia-chartered corporation with its principal office in Virginia, whose address is PORTFOLIO ADMIN, 1400 BEST PLAZA DRIVE VA2-410-02-01, RICHMOND, VA 23227-0000 ("Grantee," also referred to below as "Trustee").

CONVEYANCE AND GRANT. For valuable consideration, Grantor conveys, transfers, encumbers and pledges and assigns to Trustee for the benefit of Lender as Beneficiary, all of Grantor's present and future right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way,

TAKED #113-A-58

Ex A

4 B 2 3 4 9 P 6 4 3

**DEED OF TRUST**  
(Continued)

Loan No: 66991008494599

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and appurtenances; and all rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, (the "Real Property") located in ROCKINGHAM, Commonwealth of Virginia:

See Exhibit A, which is attached to this Deed of Trust and made a part of this Deed of Trust as if fully set forth herein.

The Real Property or its address is commonly known as 5392 BRYANT HOLLOW RD, ELKTON, VA 22827-2647. The Real Property Tax Map Reference No(s) is/are 113-A-58

**REVOLVING LINE OF CREDIT.** Specifically, in addition to the amounts specified in the indebtedness definition, and without limitation, this Deed of Trust secures a revolving line of credit, which obligates Lender to make advances to Borrower so long as Borrower complies with all the terms of the Credit Agreement. Such advances may be made, repaid, and remade from time to time, subject to the limitation that the total outstanding balance owing at any one time, not including finance charges on such balance at a fixed or variable rate or sum as provided in the Credit Agreement, any temporary overages, other charges, and any amounts expended or advanced as provided in either the indebtedness paragraph or this paragraph, shall not exceed the Credit Limit as provided in the Credit Agreement. It is the intention of Grantor and Lender that this Deed of Trust secures the balance outstanding under the Credit Agreement from time to time from zero up to the Credit Limit as provided in this Deed of Trust and any intermediate balance.

**FUTURE ADVANCES.** In addition to the amounts specified in the Credit Agreement, this Deed of Trust also secures future advances.

Grantor presently, absolutely, and irrevocably assigns to Lender (also known as Beneficiary in this Deed of Trust) all of Grantor's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property. In addition, Grantor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rents.

**THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS AND (B) PERFORMANCE OF EACH OF GRANTOR'S AGREEMENTS AND OBLIGATIONS UNDER THE CREDIT AGREEMENT, THE RELATED DOCUMENTS, AND THIS DEED OF TRUST. THIS DEED OF TRUST IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:**

**GRANTOR'S REPRESENTATIONS AND WARRANTIES.** Grantor warrants that: (a) Grantor has the full power, right, and authority to enter into this Deed of Trust and to hypothecate the Property; (b) the provisions of this Deed of Trust do not conflict with, or result in a default under any agreement or other instrument binding upon Grantor and do not result in a violation of any law, regulation, court decree or order applicable to Grantor; (c) Grantor has established adequate means of obtaining from Borrower on a continuing basis information about Borrower's financial condition; and (d) Lender has made no representation to Grantor about Borrower (including without limitation the creditworthiness of Borrower).

**PAYMENT AND PERFORMANCE.** Except as otherwise provided in this Deed of Trust, Borrower shall pay to Lender all indebtedness secured by this Deed of Trust as it becomes due, and Borrower and Grantor shall strictly perform all their respective obligations under the Credit Agreement, this Deed of Trust, and the Related Documents.

**POSSESSION AND MAINTENANCE OF THE PROPERTY.** Borrower and Grantor agree that Borrower's

B 2 5 7 9 P 2 8 2

Exp

WHEN RECORDED MAIL TO:  
Bank of America Consumer Collateral  
Tracking  
FL9-700-04-10  
9000 Southside Blvd, Bldg 700  
Jacksonville, FL 32258

Tax Map Reference No(s): 113-A-58

FOR RECORDER'S USE ONLY

This Deed of Trust prepared by: SUSAN H LEONITUK, Bank of America, N.A.

DEED OF TRUST

Name and address of Noteholder secured hereby:

Bank of America, N.A.  
c/o Virginia Main Office  
1111 E. Main Street  
Richmond, VA 23219

MAXIMUM LIEN. The maximum principal amount secured by this Deed of Trust is \$58,686.71, plus interest and cost of collection.

THIS DEED OF TRUST is dated September 14, 2004, among IRENE B CARTER AKA IRENE DAVIS CARTER ("Grantor"); Bank of America, N.A., whose address is c/o Virginia Main Office, 1111 E. Main Street, Richmond, VA 23219 (referred to below sometimes as "Lender" and sometimes as "Beneficiary"); and PHLAP, INC., a United States or Virginia-chartered corporation with its principal office in Virginia, whose address is PORTFOLIO ADMIN. 1400 BEST PLAZA DRIVE VA2-410-02-01, RICHMOND, VA 23227-0000 ("Grantee," also referred to below as "Trustee").

CONVEYANCE AND GRANT. For valuable consideration, Grantor conveys, transfers, encumbers and pledges and assigns to Trustee for the benefit of Lender as Beneficiary, all of Grantor's present and future right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; and all rights, royalties, and profits relating to the real property, including without

EX B

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DEED OF TRUST  
(Continued)

Loan No: 7022836618

Page 2

limitation all minerals, oil, gas, geothermal and similar matters, (the "Real Property") located in ROCKINGHAM, Commonwealth of Virginia:

SEE ATTACHED EXHIBIT A.....THIS DEED OF TRUST REPRESENTS REFINANCING OF AN ORIGINAL DEBT WITH THE SAME LENDER, BANK OF AMERICA, N.A., RECORDED IN DEED BOOK 2530, PAGE 410, SECURED HEREBY PURSUANT TO SECTION 58.1-803D OF THE CODE OF VIRGINIA 1960 AS AMENDED. THE ORIGINAL DEBT IS \$68,000, AND THE ADDITIONAL DEBIT ON WHICH TAXES ARE TO BE PAID IS \$0.00.

The Real Property or its address is commonly known as 5392 BRYANT HOLLOW RD, ELKTON, VA 22827-2547. The Real Property Tax Map Reference No(s) is/are 113-A-58

Grantor presently, absolutely, and irrevocably assigns to Lender (also known as Beneficiary in this Deed of Trust) all of Grantor's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property. In addition, Grantor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rents.

THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS DEED OF TRUST. THIS DEED OF TRUST IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

**GRANTOR'S REPRESENTATIONS AND WARRANTIES.** Grantor warrants that: (a) Grantor has the full power, right, and authority to enter into this Deed of Trust and to hypothecate the Property; (b) the provisions of this Deed of Trust do not conflict with, or result in a default under any agreement or other instrument binding upon Grantor and do not result in a violation of any law, regulation, court decree or order applicable to Grantor; (c) Grantor has established adequate means of obtaining from Borrower on a continuing basis information about Borrower's financial condition; and (d) Lender has made no representation to Grantor about Borrower (including without limitation the creditworthiness of Borrower).

**PAYMENT AND PERFORMANCE.** Except as otherwise provided in this Deed of Trust, Borrower shall pay to Lender all indebtedness secured by this Deed of Trust as it becomes due, and Borrower and Grantor shall strictly perform all their respective obligations under the Note, this Deed of Trust, and the Related Documents.

**POSSESSION AND MAINTENANCE OF THE PROPERTY.** Borrower and Grantor agree that Borrower's and Grantor's possession and use of the Property shall be governed by the following provisions:

**Possession and Use.** Until the occurrence of an Event of Default, Grantor may (1) remain in possession and control of the Property; (2) use, operate or manage the Property; and (3) acting as Lender's agent, collect the Rents from the Property.

**Duty to Maintain.** Grantor shall maintain the Property in good condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

**Compliance With Environmental Laws.** Grantor represents and warrants to Lender that: (1) During the period of Grantor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from the Property; (2) Grantor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in

Exc

Settlement Statement Optional Form for Transactions without Sellers		U.S. Department of Housing and Urban Development		OMB Approval No. 2802-0491	
Name & Address of Borrower: MELVIN S CARTER IRENE S CARTER 5392 BRYANT HOLLOW RD ELKTON, VA 22827-2547		Name & Address of Lender: Bank of America, N.A. c/o Virginia Main Office 1111 E. Main Street Richmond, VA 23219			
Property Location: (if different from above)  5392 BRYANT HOLLOW RD, ELKTON, VA 22827-2547		Settlement Agent: BANK OF AMERICA  Place of Settlement: 301 W SPOTSWOOD TRAIL, ELKTON, VA 22827-0000			
Loan Number: 7022836818		Settlement Date: September 14, 2004			
<b>L. Settlement Charges</b>		<b>M. Disbursement to Others</b>			
800. Items Payable in Connection with Loan		1501.			
801. Loan Origination Fee 1.000%		559.88		1502. BANK OF AMERICA #009990305762842 6,163.40	
802. Loan Discount %				1503. BANK OF AMERICA #58891008494804 49,616.56	
803. Appraisal Fee to				1504. BANK OF AMERICA #68991008494889 1,178.67	
804. Credit Report to				1505.	
805. Lender's Inspection Fee				1506.	
806. Mortgage Insurance Application Fee				1507.	
807.				1508.	
808.				1509.	
809. FLOOD DETERM. FEE to BANK OF AMERICA		6.00		1510.	
810.				1511.	
811.				1512.	
900. Items Required by Lender to be Paid in Advance				1513.	
901. Interest from to @ \$ /day				1514.	
902. Mortgage Insurance Premium for months to				1515.	
903. Hazard Insurance Premium for month(s) to				1520. TOTAL DISBURSED (enter on line 1503) 55,957.63	
904. Flood Insurance Premium					
905.					
1000. Reserves Deposited with Lender					
1001. Hazard Insurance mos. @ \$ per mo.					
1002. Mortgage Insurance mos. @ \$ per mo.					
1003. City property taxes mos. @ \$ per mo.					
1004. County property taxes mos. @ \$ per mo.					
1005. Annual assessments mos. @ \$ per mo.					
1006. mos. @ \$ per mo.					
1007. mos. @ \$ per mo.					
1008. Aggregate Accounting Adjustment		0.00			
1100. Title Charges					
1101. Settlement or closing fee to					
1102. Abstract or title search to HOMEFOCUS		110.00			
1103. Title examination to					
1104. Title insurance binder to					
1105. Document preparation to					
1106. Notary fees to					
1107. Attorney's fees to (includes above item numbers )					
1108. Title insurance to (includes above item numbers )					
1109. Lender's coverage \$					
1110. Owner's coverage \$					
1111.					
1112.					
1113.					

3 Loans Combined together  
that she is paying  
on now at Bank  
of America.

1200. Government Recording and Transfer Charges		83.50	<b>N. NET SETTLEMENT</b>	
1201. Recording fees:			1600. Loan Amount	\$ 68,686.71
1202. City/county tax/stamps:			1601. Plus Cash/Check from Borrower	\$
1203. State tax/stamps:			1602. Minus Total Settlement Charges (line 1400)	\$ 729.08
1204.			1603. Minus Total Disbursement to Others (line 1520)	\$ 65,957.63
1205.			1604. Equals Disbursements to Borrower (after expiration of any applicable rescission period required by law)	\$
1300. Additional Settlement Charges				
1301. Survey to				
1302. Pest Inspection to				
1303. Architectural/Engineering Services to				
1304. Building Permit to				
1305.		729.08		
1400. Total Settlement Charges (enter on line 1602)				

BORROWER(S) SIGNATURE(S): Melvin S Carter Irene S Carter 9/1/14  
 MELVIN S CARTER Date IRENE S CARTER  
 Form HUD-1A ref. RESPA



Reg. 10991212

82804P298

Ex D

**ASSIGNMENT OF  
DEED OF TRUST**

**KNOW ALL MEN THESE PRESENTS:**

That **BANK OF AMERICA (GRANTOR)** in a successor to NationsBank and Bontemps's National Bank, a domestic corporation, organized under the laws of the United States, with its principal office and place of business located at 4161 Piedmont Parkway Greensboro, NC 27410 for value received and without recourse or warranty, the receipt whereof is hereby acknowledged, by this presents does hereby sell, assign, transfer and set over unto the

**GRANTEE: UNITED GUARANTY RESIDENTIAL INSURANCE COMPANY OF NORTH CAROLINA**  
230 N. Elm Street# 27401  
PO Box 28327  
Greensboro, NC 27420-0327

All interest in and to the instrument dated this 6<sup>TH</sup> DAY OF FEBRUARY, 2003 by and among IRENE B CARTER AKA IRENE DAVIS CARTER as recorded in the official records of ROCKINGHAM COUNTY, STATE OF VIRGINIA BOOK 2349 PAGE 642 on the following described pieces or parcel of land:

**LEGAL DESCRIPTION OF PROPERTY**

**SEE EXHIBIT A**

The real property of its address is commonly known as: 5392 BRYANT HOLLOW RD, ELKTON, VA 22827-2347.

PREPARED BY: Debbie White  
WITNESS  
TYPED/PRINTED NAME: Debbie White

WITNESS: D. Gonsales  
TYPED/PRINTED NAME: Gonsales Duggi

NAME: Anne Sessoms  
TYPED NAME: Anne Sessoms Insurance Analyst

Date Prepared: DEC 23 2005  
Firm Name and Address:  
Bank of America  
4161 PIEDMONT PARKWAY GREENSBORO NC 27410

BY: Janet Chaffin  
NAME OF OFFICER: Janet Chaffin  
TYPED/PRINTED NAME OF OFFICER: Janet Chaffin

Recorded On: 2013-May-09 As: 12889

Ex F

Doc Bk	Vol	Pa. # of Pa.
00012889	OR 4237	403 3
May 09, 2013		

Return To:  
 Prepared By:  
 Atlantic Law Group, LLC  
 PO Box 2548  
 Leesburg, VA 20177  
 ALG: 537998  
 FCI Lender Services, Inc.  
 Tax ID# 133-(A)-L58

### SUBSTITUTION OF TRUSTEE

THIS SUBSTITUTION OF TRUSTEE is made between ANS Servicing, LLC ("Noteholder") and Irene B. Carter, a/k/a Irene Davis Carter ("GRANTOR(S)" for recordation purposes) and ALG Trustee, LLC, a Virginia Limited Liability Company, PO Box 2548, Leesburg, VA 20177, Substitute Trustee ("Grantee").

WHEREAS, the Noteholder is the holder of the Note secured by the Deed of Trust dated February 6, 2003, from Irene B. Carter, a/k/a Irene Davis Carter to certain trustees therein Prlap ("Trustee(s)"), payable to Bank of America, N.A. and recorded among the land records of Rockingham County, Virginia on September 4, 2003, at Instrument Number 030400, in Deed Book 2349, at Page 642 ("Deed of Trust"); and

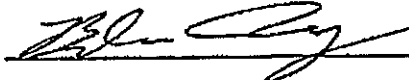
WHEREAS, the Deed of Trust grants to and/or Code of Virginia §55.59 permits the Noteholder the unconditional power to appoint Substitute Trustee(s) in place and stead of the original Trustee(s) named in the Deed of Trust; and the Noteholder desires to exercise the power to appoint Substitute Trustee(s) in place and in stead of the Trustee(s) and to vest the Substitute Trustee(s) with same rights, powers, title and estate as are vested in the Trustee(s).

NOW, THEREFORE, by virtue of the aforementioned Deed of Trust and the statute, the Noteholder does hereby appoint ALG Trustee, LLC as Substitute Trustee(s) under the Deed of Trust, with Identically the same title and estate in and to the land, premises and property conveyed by the Deed of Trust, with all rights, powers, trusts and duties of the Trustees.

Recorded On: 2013-May-09 As-12889

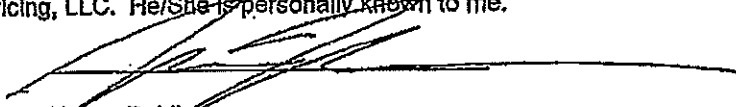
Substitution of Trustee  
L537998

ANS Servicing, LLC

  
By: Name: Brandon Wong  
Title: Manager  
Date: 5/1/13

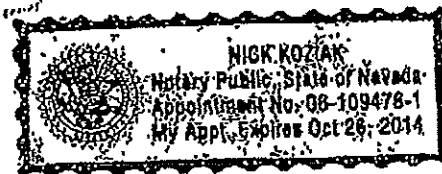
STATE OF Nevada  
COUNTY OF Clark

I hereby certify that on this 1<sup>st</sup> day of May, 2013, before me, the subscriber, a Notary Public for the State of Nevada and County of Clark aforesaid, personally appeared Brandon Wong who acknowledged himself/herself to be the Manager of ANS Servicing, LLC. He/She is personally known to me.

  
Notary Public

My commission expires: 10-26-14

Return To:  
Atlantic Law Group, LLC  
PO Box 2548  
Leesburg, VA 20177  
L537998  
FCI Lender Services, Inc.



44



## TRANSMISSION VERIFICATION REPORT

Ex 6

TIME : 05/28/2013 16:39  
 NAME : TUCKER GRIFFIN BARNE  
 FAX : 4349733227  
 TEL : 4349737474  
 SER. # : BR0C9J918736

DATE, TIME  
 FAX NO./NAME  
 DURATION  
 PAGE(S)  
 RESULT  
 MODE

05/28 16:39  
 17039409110  
 00:00:49  
 02  
 OK  
 STANDARD  
 ECM



<b>To:</b> Atlantic Law Group, LLC	<b>From:</b> Caroline Klosko
<b>Fax:</b> 7039409110	<b>Phone:</b> 434.951.0843 <b>Fax:</b> 434.951-0885
<b>Phone:</b>	<b>Date:</b> May 28, 2013
<b>CC:</b>	<b>Pages (including cover):</b> 2
<b>Re:</b> Irene Carter, 5392 Bryant Hollow Road, Elkton, Virginia 22827	
<b>Comments:</b>	

To Whom It May Concern:

I represent Irene Carter, property address given above, whose home is currently scheduled to be foreclosed on June 11. An Authorization for Release of Information signed by Ms. Carter is attached to this letter. We believe that the Deed of Trust under which your law firm is foreclosing was paid off years ago. I hope that you will agree to postpone the foreclosure until the problem can be looked into.

Please fax a copy of the relevant Deed of Trust, any titlework, and any documents evidencing any assignments of the Deed of Trust to my attention at (434) 951-0876. The documents can also be emailed to [cklosko@tgblaw.com](mailto:cklosko@tgblaw.com).

Thank you for your attention to this matter. I will be calling you shortly to follow up.

Sincerely,

Caroline Klosko

TRANSMISSION VERIFICATION REPORT

TIME : 05/29/2013 15:56  
NAME : TUCKER GRIFFIN BARNE  
FAX : 4949733227  
TEL : 4349737474  
SER.# : BRO09J918736

DATE, TIME  
FAX NO./NAME  
DURATION  
PAGE(S)  
RESULT  
MODE

05/29 15:53  
17039409110  
00:02:58  
09  
OK  
STANDARD  
ECM

307 West Rio Road  
Charlottesville, Virginia 22901  
Main Line: 434.973.7474  
Website: www.TGBlaw.com



Caroline Klosko  
Attorney

Direct Dial: 434.951.0843  
Direct Fax: 434.951.0885  
Email: CKlosko@TGBlaw.com

May 29, 2013

Atlantic Law Group  
PO Box 3548  
Leesburg, Virginia 20177

BY FACSIMILE ONLY: (703) 940-9110

Re: Irene Carter, File No: L537998, 5392 Bryant Hollow Road, Elkton, Virginia 22827

Pages Including Cover: 8

To Whom It May Concern:

I represent Irene Carter, whose file number and property address are given above. A foreclosure sale of Ms. Carter's home is currently set for June 11. I am writing to notify you that it would be illegal for your law firm to proceed with this sale.

Your law firm is planning to foreclose pursuant to a Deed of Trust in the amount of \$20,000 which was recorded on September 4, 2003 in the Rockingham County land records at Book 2349, Page 642. Partial copies of the relevant Deed of Trust and Substitution of Trustees are attached to this letter, collectively as Exhibit A. Unfortunately, that Deed of Trust was refinanced on September 14, 2004 with a second Deed of Trust. A partial copy of the second Deed of Trust, along with the relevant settlement statement, are attached to this letter collectively as Exhibit B. As you can see, the settlement statement memorializes the refinancing of three loans, collectively as Exhibit B. This is the same Deed of Trust that was recorded in Book





307 West Rio Road  
Charlottesville, Virginia 22901  
Main Line: 434.973.7474  
Website: www.TGBlaw.com

Caroline Klosko  
Attorney

Direct Dial: 434.951.0843  
Direct Fax: 434.951.0885  
Email: CKlosko@TGBlaw.com

May 29, 2013

Atlantic Law Group  
PO Box 3548  
Leesburg, Virginia 20177

BY FACSIMILE ONLY: (703) 940-9110

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Pages Including Cover: 8

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The Deed of Trust that you intend to foreclose under has been refinanced and paid off. This means you do not, in fact, have the authority to foreclose. As substitute trustee, your law firm owes "fiduciary obligations to both the creditor and the debtor in executing the powers granted it under a Deed of Trust." *Bremer v. Bltner*, 44 Va. Cir. 505, 512 (Va. Cir. Ct. 1996). If you choose to proceed with the sale under these circumstances, you will be in breach of your fiduciary duties, and Ms. Carter will pursue all available remedies against you.

In view of these circumstances, I hope you will agree to cancel the sale. I will be calling shortly to follow up on this. I can be reached at (434) 951-0843.

Most Sincerely,

Caroline Klosko, Esq.